

**2005 REQUEST FOR PROPOSAL  
FOR DRUG TESTING SERVICES  
FOR THE STATE BAR OF CALIFORNIA  
LAWYER ASSISTANCE PROGRAM**

This is a Request for Proposals (RFP) for drug testing services for attorneys participating in the State Bar of California's Lawyer Assistance Program.

**Please submit five copies of your proposal in a sealed envelope no later than 5:00 p.m. on October 7, 2005.** All responses to the RFP are to be submitted to:

Richard Carlton  
Deputy Director, Lawyers Assistance Program  
180 Howard Street  
San Francisco, CA 94105-1639

Any technical questions regarding the RFP may be directed to Richard Carlton, at the above address or by calling 415-538-2355, by fax at 415-538-2356, or via e-mail at [richard.carlton@calbar.ca.gov](mailto:richard.carlton@calbar.ca.gov).

## I. INTRODUCTION

The State Bar of California ("State Bar") is a constitutional agency established as a public corporation in the judicial branch of government. The State Bar, which acts as an administrative arm of the California Supreme Court, is responsible for the admission and discipline of attorneys. All attorneys practicing law in California must be members of the State Bar. Recently, pursuant to Business & Professions Code section 6230 et seq., the State Bar set up a Lawyer Assistance Program to assist in the rehabilitation of attorneys who have problems with substance abuse or mental illness. The program offers support and structure for attorneys recovering from these disorders. Experts will provide consultation regarding rehabilitation and private support groups will be offered to the attorneys in the program.

Although the program is funded by the State Bar, participants will be responsible for all expenses related to treatment and recovery, **including any urinalysis and specimen collection**. Specifically, this RFP seeks responsible laboratories or third-party administrators to provide low rates to participants in the program for:

- Random notification of program participants that they are due to be tested;
- A statewide network of local specimen collection sites sufficient to limit program participant's travel time to and from a collection site;
- A strict chain-of-custody protocol for all specimens following collection;

- Urinalysis services meeting the highest standards established by the federal government;
- Detailed reporting of results, electronically transmitted into the Lawyer Assistance Program database; and
- Participant billing.

In accordance with the State Bar's procurement policies, all contracts which may be in excess of \$50,000 are subject to formal competitive bidding.

## **II. SPECIFIC CONDITIONS AND REQUIREMENTS**

### **A. QUALIFICATIONS**

1. Collection personnel trained to strictly follow the specimen collection procedures detailed in Urine Specimen Collection Guidelines, Office of Drug and Alcohol Policy and Compliance, US Department of Transportation (August, 2001).
2. Strict compliance with the urinalysis testing procedures set forth by in the US Department of Transportation Workplace Drug Testing Programs guidelines (49 CFR Part 40), which requires that urinalysis testing be confidential, professional, and consistent.
3. Laboratory services provided exclusively by a laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the US Department of Health and Human Services.
4. A sufficient number of specimen collection sites or personnel throughout California to limit the amount of travel required by our program participants.

### **B. SERVICES REQUIRED**

1. Cost for any necessary supplies and collection expenses must be included in the fee
2. Split samples
3. Overnight transportation
4. Forty-eight (48) hour response time window on initial results
5. Automatic confirmation of initial (emit) detection
6. Confirmation of positive results within 72 hours
7. Immediate reporting by fax to participant's case manager of all positive test results

8. Laboratory consultation
9. Availability of observed collections
10. Standard panel testing for:
  - a. Ethanol (all ethanol positives must be tested for sugar)
  - b. Marijuana
  - c. Amphetamines
  - d. Cocaine
  - e. PCP
  - f. Barbiturates
  - g. Benzodiazepines
  - h. Methadone
  - i. Narcotics
  - j. Elavil
  - k. Dextromethorphan
  - l. Meprobamate
  - m. Ritalin
  - n. Phentermine
  - o. Ultram
  - p. LSD
11. Testing for the following Antagonists:
  - a. Disulfiram
  - b. Naltrexone
12. Ability to perform the following Adulteration Assays:
  - a. Creatinine
  - b. Specific Gravity
  - c. pH
  - d. Oxidizing Adulterants, including Nitrites, Glutaraldehyde, and Pyridinium Chlorochromate.
13. Ability to perform EtG tests, either separate from or in addition to the standard panel, above.
14. Ability to do any other add-ons to the standard panel as needed.
15. Ability to electronically transmit test results into the Lawyer Assistance Program tracking system ("LAPNET")
16. Monthly reports listing each participant by case number, the dates the participant was supposed to provide a specimen, the actual specimen collection dates, and test results; additionally, an aggregate report each month of all tests scheduled and conducted during the month and number of negative and confirmed positive results
17. Retention of positive specimens for one year (frozen)
18. A random call-in or call-out system for notifying participants that

- they are due for testing
19. Participant billing

### III. GENERAL INFORMATION

#### A. Submission Requirements

The submission requirements for the RFP are detailed below. Please submit five (5) copies of your response. **Any submission shall constitute an irrevocable offer for thirty (30) days following the deadline for its submission.** Information contained in the proposal is confidential and shall remain so until a contract is signed.

Responses to the RFP must contain the following information:

1. Qualification statement of bidder (including description of similar projects).
2. A list of the groups for which you have performed similar projects. Include a reference or contact person for each.
3. Evidence that vendor, if a corporation, is in good standing and qualified to conduct business in California, and copies of business licenses, professional certifications or other credentials.
4. Details about the length of time your company has been in business, financial ratings, and credentialed staff.
5. An overall description of the techniques, approaches, and methods to be used in performing the project.
6. Total cost for each service.
7. A list of all locations and hours of operation.

#### B. Rejection of Proposals

The State Bar reserves the right to reject any or all submissions in whole or in part for any reason without incurring any cost or liability whatsoever. All proposals will be reviewed for completeness of the submission requirements. If a proposal fails to meet a material requirement in the Request for Proposal, or if it is incomplete or contains irregularities, then the proposal may be rejected. A deviation is material to the extent that a response is not in substantial accord with the requirements in the RFP.

Immaterial deviations may cause a bid to be rejected. The State Bar may or may not waive an immaterial deviation or defect in a proposal. The State Bar's waiver of an immaterial deviation or defect shall in no way modify the RFP or excuse a

vendor from full compliance with solicitation document specifications.

All bids may be rejected in any case where it is determined that the proposals are not really competitive, or where the cost is not reasonable.

Proposals that contain false or misleading statements may be rejected if in the State Bar's opinion the information was intended to mislead the State Bar regarding a requirement of the RFP.

### **C. Evaluation Process And “Highest Scored Proposal”**

An evaluation team will review in detail all proposals that are received to determine the highest scored proposal.

The State Bar reserves the right to determine the suitability of proposals on the basis of a proposal's meeting administrative requirements, technical requirements, the review team's assessment of the quality and performance of the service proposed, and cost.

During the evaluation process, the State Bar may require a vendor's representative to answer questions with regard to the vendor's proposal. Failure of a vendor to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal non-responsive.

The following criteria will be used in reviewing and comparing the proposals and in determining the "highest scored proposal." The weight to be assigned to each criteria appears following each item:

- > Responsiveness of proposal to original specifications described in the RFP, including whether bidder has agreed to the contracting requirements set forth in Section IV of this RFP (20%);
- > The quality and performance of the service to be provided by the bidder, including responsiveness and quality of customer service (20%);
- > The technical ability, capacity, flexibility, financial stability, and skill of the bidder to perform the contract, including ability to perform within time specified without delay and demonstrated success in marketing similar programs (20%);
- > The character, integrity, reputation, judgment, experience, and efficiency of the bidder, including the quality of the bidder's performance on previous contracts with the State Bar, if any, or familiarity/understanding of diversion

programs (10%);

> Cost of the project (30%).

**D. Award and Execution of Contract**

Subject to the State Bar's right to reject any or all proposals, the HSP will be awarded the contract. Notice will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA 94025 and written notice will be sent to the address identified in the proposal on or about December 1, 2005, of the State Bar's intention to award the contract to the HSP. It is anticipated that final selection of the HSP will be made by December 15, 2005. The evaluation team will select a winning proposal subject to approval by the Board of Governors. Upon selection, the State Bar and the selected Vendor will enter into good faith negotiations on a contract containing, without limitation, the Statement of Work and Contracting Requirements (see Section IV below).

No contract or agreement, express or implied, shall exist or be binding on the State Bar before the execution of a written contract by both parties. If agreement on the terms of such a contract cannot be reached after a period deemed reasonable by the State Bar in its sole discretion, the State Bar may enter into negotiations and sign a contract with any other Vendor who submitted timely, responsive and responsible proposals to this RFP. Alternatively, if, after the State Bar and the HSP agree to terms and execute a contract, that contract is terminated for any reason, the State Bar may, in its sole discretion, either enter into negotiations with Vendor with the next highest scored proposal, or issue a new RFP and begin the proposal process anew.

Questions regarding the State Bar's award of any business on the basis of proposals submitted in response to the RFP, or on any other matter in connection with the selection process, should be submitted in writing and addressed to Richard Carlton, Deputy Director, Lawyer Assistance Program.

Where written notice is required in this RFP, the notice must be sent by U.S. mail and either facsimile or e-mail.

**E. Errors in the RFP**

If a vendor submitting a proposal discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the vendor should immediately provide the State Bar with written notice of the problem and request that the RFP be clarified or modified. Without disclosing the source of the request, the State Bar may modify the document prior to the date fixed for submission of proposals by

issuing an addendum to all vendors to whom the RFP was sent.

If prior to the date fixed for submission of proposals, a vendor submitting a proposal knows of or should have known of an error in the RFP but fails to notify the State Bar of the error, the vendor shall bid at its own risk, and if the vendor is awarded the contract, it shall not be entitled to additional compensation or time by reason of the error or its later correction.

**F. Questions Regarding the RFP**

If a vendor's question relates to a proprietary aspect of its proposal or bid and the question would expose proprietary information if disclosed to competitors, the vendor may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, the vendor must submit a statement explaining why the question is sensitive. If the State Bar concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence. If the State Bar does not concur regarding the proprietary nature of the question, the question will not be answered in this manner and the vendor will be notified.

If a vendor submitting a proposal or bid believes that one or more of the solicitation document's requirements is onerous or unfair, or that it unnecessarily precludes less costly or alternative solutions, the vendor may submit a written request that the RFP be changed. The request must set forth the recommended change and the vendor's reason for proposing the change. Any such request must be submitted to the State Bar no later than three (3) days after receipt of the RFP.

**G. Addenda**

The State Bar may modify the RFP prior to the date fixed for submission of proposals by faxing an addendum to the vendors to whom the RFP was sent. If any vendor determines that an addendum unnecessarily restricts its ability to bid, it must notify the State Bar no later than one (1) day following the receipt of the addendum.

**H. Withdrawal and Resubmission/Modification of Proposals**

A vendor may withdraw its proposal at any time prior to the deadline for submitting proposals by notifying the State Bar in writing of its withdrawal. The vendor must sign the notice. The vendor may thereafter submit a new or modified proposal, provided that it is received at the State Bar no later than the deadline. Modification offered in any other manner, oral or written, will not be considered.

Proposals cannot be changed after the evaluation process begins.

**I. Protest Procedure**

1. A vendor submitting a proposal may protest the award if it meets all of the following conditions:
  - a. The vendor has submitted a proposal that it believes to be the lowest responsible bid, under the criteria set forth in Section II.C. above;
  - b. The vendor believes that its proposal meets the State Bar's administrative and technical requirements, proposes services of proven quality and performance, and offers a competitive cost to the State Bar; and
  - c. The vendor believes that the State Bar has incorrectly selected another vendor submitting a proposal for award.
2. A vendor submitting a proposal who is qualified to protest should contact Richard Carlton, Deputy Director, Lawyer Assistance Program. If Mr. Carlton is unable to resolve the protest to the vendor's satisfaction, the vendor should file a written protest within five (5) working days of the notice of intention to award contract. The written protest must state the facts surrounding the issue and the reasons the vendor believes the award to be invalid. The protest must be sent by certified or registered mail or delivered personally [a receipt should be requested for hand-delivered mail] to:

**Robert Hawley  
Deputy Executive Director  
The State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1639**
3. Protests will be reviewed and decided by the State Bar's Award Protest Team within 30 days after the State Bar issues written acknowledgment of the protest. In the event that a protest is filed, the contract award will be postponed pending resolution of the protest.



**J. News Releases**

News releases pertaining to the award of a contract may not be made without the prior written approval of the State Bar.

**K. Disposition of Materials**

All materials submitted in response to an RFP will become the property of the State Bar of California and will be returned only at the State Bar's option and at the expense of the vendor submitting the proposal or bid. One copy of a submitted proposal will be retained for official files and become a public record. However, any confidential material submitted by a vendor that was clearly marked as such will be returned upon request.

**IV. CONTRACTING REQUIREMENTS**

Upon selection of a Contractor, the terms set forth in this RFP are to be embodied in a definitive agreement containing such additional covenants and other provisions as may be mutually acceptable. The State Bar contemplates that, in addition to the terms previously described in this RFP, final agreement between the State Bar and the selected Contractor will include, without limitation, the following principal terms. Submission of a proposal shall constitute agreement to contract on these terms, except for any term specifically reserved in the proposal by the vendor for future negotiation.

**A. Time of Essence**

Time is of the essence with respect to Vendor's performance of the services and equipment to be provided in this agreement.

**B. Warranties and Representations**

1. **Qualifications.** Vendor represents and warrants that it, or alternatively, any authorized subcontractor it retains to perform services hereunder, possess the requisite skill, expertise, experience and resources to perform the scope of services required in a diligent, timely, professional and workmanlike manner consistent with the highest standards of the industry. Vendor will at all times supply an adequate number of well-qualified personnel to perform the work. Vendor will provide a contact person available and authorized to remedy any non-conformity with this warranty.
2. **Licenses.** Vendor represents and warrants that the Vendor and any authorized subcontractor acting on its behalf currently holds and maintains in good standing

any and all necessary licenses, permits or other credentials to perform the services pursuant to this agreement, as required by law or other applicable regulatory authority, which shall at all times remain in full force and effect during the term of this agreement.

3. **Conflicts.** Prior to execution of this agreement, Vendor represents and warrants that it has conducted a conflict of interest check, that the State Bar has been notified in writing of any and all actual or potential conflicts, either past or present, and that in Vendor's estimation, its independence or that of any party acting on its behalf will not be impaired during performance of services under this agreement.
4. **Survival.** Vendor's representations and warranties shall survive: (i) execution and delivery of this agreement; and (ii) expiration or termination of this agreement.

#### **C. Equipment, Tools, Supplies**

The Vendor will supply all equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services and insurance required. The Vendor is not required to purchase, rent or hire any equipment, tools, supplies, offices, transportation, personnel, insurance or instrumentalities from the State Bar. The State Bar has no obligation whatsoever to provide any equipment, tools, supplies, instrumentalities, transportation, support services or insurance required to perform services under this agreement.

#### **D. Indemnity Obligations of Vendor**

To the fullest extent permitted by law, Vendor agrees to protect, indemnify, defend and hold the State Bar and the State Bar's Board of Governors, officers, employees, agents and representatives and each of their successors and assigns entirely harmless from and against any and all claims, actions, demands, proceedings, liabilities, damages, judgments, fines, penalties, settlements, costs and charges, including, without limitation, attorneys' fees and expenses, arising directly or indirectly from or in connection with (a) any breach of the agreement, (b) any actual or alleged negligent act, negligent error or omission, intentional misconduct of, or violation of any law by Vendor, Vendor's employees, subcontractors, agents, representatives or assigns (collectively, "Vendor's Agents") in the performance or non-performance of the professional services required to be performed by the Vendor under the agreement; or (c) the State Bar's enforcement of its rights under this indemnity provision. Vendor agrees that its obligations under this indemnity will survive the expiration and termination of this agreement.

In the event both the State Bar and Vendor are named as defendants in the same civil action, and the State Bar determines that a conflict of interest exists between the parties, Vendor will agree to provide, at its own cost, independent counsel for the State Bar.

The State Bar may, at its option, designate its Office of General Counsel as equal participating counsel in any litigation where the State Bar is defended by Vendor.

**E. Insurance Obligations of Vendor**

Vendor will provide and keep in full force and effect during the term of this agreement, at Vendor's own cost and expense, the following insurance policies for the joint benefit of Vendor and the State Bar, with an insurer reasonably acceptable to the State Bar:

1. Commercial general liability insurance with a general aggregate limit (other than products/completed operations) of at least Two Million Dollars (\$2,000,000.00); at least One Million Dollars (\$1,000,000.00) personal and advertising injury limit; at least One Million Dollars (\$1,000,000.00) premises and operations limit; and at least One Million Dollars (\$1,000,000.00) each occurrence limit;
2. Workers' compensation coverage as required by law, together with employer liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence.
3. Comprehensive automobile liability insurance covering owned, leased, hired and non-owned vehicles with at least One Million Dollars (\$1,000,000.00) combined single limit.
4. Professional liability insurance with a general aggregate limit of Three Million Dollars (\$3,000,000) and an each occurrence limit of Three Million Dollars (\$3,000,000).

Vendor will deliver certificates of such insurance within seven (7) days of the execution of this agreement to the State Bar's offices at 180 Howard Street, San Francisco, CA 94105, Attn: Procurement Officer. Each certificate will name the State Bar as an additional insured, and provide that the Vendor's policy shall be primary and noncontributing with respect to any insurance carried by the State Bar. Each policy will provide for thirty (30) days prior written notice to the State Bar in the event of cancellation or reduction in coverage or amount. If Vendor fails to secure and maintain insurance policies complying with the provisions of this agreement, the State Bar may purchase the appropriate insurance policies and Vendor will pay upon demand the cost of such insurance policies to the State Bar, or the State Bar may terminate this agreement. In addition to the required insurance to be maintained by the Vendor, if the Vendor assigns any portion of the duties under this agreement in accordance with the terms hereof, each subcontractor or assignee will purchase and maintain the same insurance coverage required hereunder.

Vendor will immediately notify the State Bar if Vendor's commercial general liability insurance contains restrictive endorsements other than those restrictive endorsements normally included in the State of California. If Vendor's commercial general liability insurance contains such restrictive endorsements, Vendor shall have five (5) business days to remove said restrictions. If Vendor is unable to do so, the State Bar may terminate this agreement, and will be required to give the Vendor no more than two (2) days' notice of such termination, notwithstanding anything in this agreement to the contrary.

#### **F. State Bar as Public Corporation**

Vendor understands and agrees that the State Bar is a public corporation within the judicial branch of the State of California, and may be subject to special regulatory oversight by various branches of State government. Vendor further understands and agrees that any and all financial reports, analyses and data prepared in conjunction with this agreement may be provided at any time to any one or more of the following: the State Bar's Board of Governors, including, but not necessarily limited to, the California Supreme Court, the California State Auditor and legislative subcommittees. Vendor expressly consents to the provision of such information and agrees that it will not in any way impede or prevent the State Bar from fulfilling its reporting obligations. Vendor further waives any and all claims against, and forever releases the State Bar and its Board of Governors from any and all liability arising out of or in connection with the State Bar's disclosure of any State Bar audit information as part of its audit reporting obligations.

#### **G. Termination**

1. **At Will.** This agreement may be terminated by the State Bar, in its sole and complete discretion, upon thirty (30) days written notice to Vendor. In the event of termination pursuant to this section, Vendor's sole compensation shall be for that portion of services performed or goods delivered up to the date of termination, together with reimbursable expenses, if any then due. Vendor shall not be paid for any services, goods or reimbursable expenses associated with any work or service not specifically authorized by the State Bar.
2. **Default by Vendor.** This agreement may be terminated by the State Bar upon fifteen (15) days written notice to the Vendor in the event the Vendor is in default under any of its provisions.
3. **Remedies for Vendor's Default.** In the event this agreement is terminated due to the default by Vendor, the State Bar reserves the right to offset the reasonable cost of all damages caused by Vendor's default against any outstanding invoices or

amounts owed to Vendor, or to make a claim against the Vendor for such damages. In addition, Vendor will not be entitled to receive any further compensation for services performed or for any reimbursable expenses incurred, and the State Bar will have the right to have the services completed by other parties, and Vendor will reimburse the State Bar for the actual costs to complete the services in excess of the balance of the fee and reimbursable expenses, if any, provided for in this agreement. Any such act by the State Bar will not be deemed a waiver of any other right or remedy of the State Bar, including, without limitation, the State Bar's right to consequential or special damages caused directly or indirectly by the Vendor's default.

4. **Automatic Termination.** The agreement will automatically terminate on the occurrence of any of the following events: (a) bankruptcy or insolvency of either party; (b) sale of a substantial portion of the business of either party; (c) failure to comply with federal, state or local laws, regulations or requirements, (d) Vendor's failure to disclose a relevant financial interest as required by the agreement or applicable law; or (e) expiration of the agreement.
5. **Authorization of Funds.** If the term of the agreement extends into fiscal year(s) subsequent to that in which it is signed, the continuation of the agreement is subject to the authorization of sufficient funding for such purpose by the California State Legislature. If sufficient funds are not so authorized, the parties mutually agree that the contract may be terminated or amended as appropriate in response to the reduction in funding. If the agreement is terminated, Vendor agrees to take back any affected equipment, products, software, or hardware furnished under this contract, and relieve the State Bar of any further obligation, except for the State Bar's obligation to pay for services already performed pursuant to the agreement.

#### **H. Confidentiality and Publicity**

Except for Vendor's employees who reasonably need to know information to perform services under this agreement, Vendor will retain all confidential information provided by the State Bar in the strictest confidence and will neither use nor disclose it to anyone without the prior written consent of the State Bar. Without waiving any right to obtain monetary damages or other appropriate relief, the State Bar retains the right to enjoin any unauthorized disclosure in an appropriate court of law or equity. Vendor will not issue or make any public announcements concerning the State Bar without the prior written consent of the State Bar.

#### **I. Nondiscrimination; Compliance with Laws**

Vendor agrees to comply with all applicable federal, state, and local laws and regulations, including but not limited to provisions of the Fair Employment and

Housing Act (Government Code section 12900 *et seq.*) and applicable regulations promulgated there under (California Administrative Code, Title 2, section 7285.0 *et seq.*). Vendor agrees to include the nondiscrimination and compliance provisions of this clause in any and all subcontracts to perform work under the agreement.

#### **J. Assignment/Subcontracting**

1. **Assignment.** Vendor will not assign or transfer its interest under the agreement, either in whole or in part, without the prior written consent of the State Bar in its sole and absolute discretion.
2. **Subcontracting.** Vendor may subcontract with other qualified firms or individuals as may be necessary for the provision of services under the agreement with prior written approval of the State Bar in its sole and absolute discretion. Any request by Vendor to subcontract the provision of services under the agreement must be submitted in writing to the State Bar, and will clearly describe: (i) the reason for using any subcontractors; (ii) the specific role each subcontractor will play in the project; and (iii) the relationship between the Vendor and subcontractor(s) during the term of this agreement. Notwithstanding approval by the State Bar or any provision in the agreement to the contrary, Vendor shall at all times remain solely and exclusively responsible for the performance of all obligations under this agreement, and shall further protect, defend, indemnify and hold the State Bar harmless from any and all claims, demands, liability, or disputes of any kind arising out of or in connection any authorized subcontractor's provisions of services under the agreement. Vendor shall provide a written guarantee that the Vendor's firm will remain so obligated under the contract, and that Vendor agrees to assume any and all necessary insurance requirements consistent with this Section J.

#### **K. Payment**

Services will be directly billed to the Lawyer Assistance Program ("Program") participant. Vendor agrees and understands that the State Bar is not responsible for the payment or nonpayment for Services rendered pursuant to the Agreement, except for those participants approved for financial assistance from the Program. Vendor agrees to submit invoices to the State bar for payments due on behalf of participants receiving financial assistance. Any such invoice will reference participants solely by case number and will include the appropriate State Bar purchase order number.

#### **L. General Provisions**

1. **Force Majeure.** Neither party will be deemed in default of this agreement or any provision hereunder to the extent that any delay or failure of such party to perform its obligations hereunder (other than the payment of money) results from any significant and material cause beyond the reasonable control and without fault or

negligence by such party. Examples of such causes include, but are not limited to, (1) acts of God or public enemy, (2) acts of the government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes or labor disputes, (8) embargoes, (9) earthquakes, or (10) unusually severe weather.

2. **Governing Law.** This agreement will be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of laws provisions.
3. **Attorneys' Fees.** In the event either party institutes any court action or proceeding against the other party arising out of or in connection with any agreement, the unsuccessful party in such action or proceeding will reimburse the successful party for its disbursements incurred in connection therewith, as well as for its reasonable attorneys' fees as fixed by the court. In addition to the foregoing award of attorneys' fees to the successful party, the successful party in any lawsuit shall be entitled to collect or enforce the judgment. This provision is separate and several and shall survive termination or expiration of this agreement, including the merger of this agreement into any judgment.
4. **Arbitration.** Any question, claim or dispute arising out of or in connection with any agreement, including, without limitation, any dispute concerning the scope or enforceability of this arbitration clause, unless otherwise specified in this Paragraph: (a) shall be conclusively settled by binding arbitration, and (b) must be brought no later than one (1) year from the date the alleged claim occurred. Such arbitration will take place before one (1) arbitrator in the City and County of San Francisco, and will be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Unless the subject matter of the dispute is otherwise pre-empted by federal law, the arbitrator will be bound to apply legal principles in accordance with California law, but without regard to its conflict of laws provisions. By agreeing to this arbitration clause, neither party waives any defenses or immunities available under California or other applicable laws, including but not limited to California Government Code Section 810 *et seq.* Each party shall be solely responsible for payment of its own pro rata share of any expenses and fees incurred during the course of arbitration. In no event will the arbitrator have the power or authority to award consequential damages, indirect or special damages, lost profits, loss of goodwill, punitive, or speculative damages, and any award shall be limited to actual damages. Disputes of Five Thousand Dollars (\$5,000) or less will be handled in Small Claims Court in the City and County of San Francisco under the terms and conditions of this Paragraph.
5. **Further Assurances.** Vendor shall deliver to the State Bar each of the instruments, certificates, opinions, and other documents as the State Bar may reasonably request

from time to time to perfect and maintain Vendor's obligations hereunder. Vendor shall fully cooperate with the State Bar and shall further perform all such additional acts reasonably requested by State Bar to the State Bar's satisfaction to effectuate the purpose of this agreement.

6. **Benefit of this Agreement.** Nothing contained in any agreement, whether express or implied, is intended to confer any right or remedy on any person, legal or natural, as to this agreement other than the parties to this agreement or their respective successors and permitted assigns, and no action may be brought against either party by any third party claiming to be a third party beneficiary to this agreement or to the transactions contemplated by this agreement. Nothing in this agreement is intended to relieve or discharge any obligation or liability of any third party to any party to this agreement, and nothing in this agreement will give, or be deemed to give, any third party any right of subrogation or action over or against either party to the agreement.

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